



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

August 3, 2004

Control No. 0402254-Pol

The Honorable Lindsey O. Graham
United States Senate
101 East Washington Street, Suite 220
Greenville, SC 29601

Re: Case 159467

Dear Senator Graham:

Thank you for your letter of July 13, 2004, regarding the Commission's recent amendments to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). You enclosed a letter from a constituent, who is a member of ACA International (ACA), the national association of credit and collection professionals. The constituent explains that the TCPA rules conflict with the Fair Debt Collection Practices Act (FDCPA), resulting in confusion and workability issues for his business. He seeks your assistance in contacting the FCC regarding a petition filed by ACA to resolve this apparent conflict.

As you know, the TCPA was enacted to address certain telemarketing practices, which Congress found to be an invasion of consumer privacy and even a risk to public safety. The TCPA specifically prohibits calls using an autodialer or prerecorded message to certain numbers, including wireless telephone numbers. In addition, the TCPA directs the Commission to adopt rules requiring all prerecorded messages to identify the business, individual or entity initiating the call and the telephone number or address of such entity.

On July 3, 2003, the Commission released a *Report and Order* in CG Docket No. 02-278, which adopted rules establishing a national do-not-call registry and other amendments to its telemarketing and facsimile advertising rules. Following the release of the *Report and Order*, the Commission received over 60 petitions for reconsideration and/or clarification of the amended rules, including ACA's petition. ACA seeks clarification that the Commission's rules do not apply to debt collectors, given the apparent conflict with the FDCPA. These petitions are currently under review and pending before the Commission. Therefore, we have placed a copy of your correspondence in the public record for this proceeding.

We appreciate the importance of these issues for ACA and its members. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. Dane Snowden".

K. Dane Snowden
Chief

Consumer & Governmental Affairs Bureau



ROBERT L. GRAHAM
SOUTH CAROLINA
(202) 224-5972

United States Senate

WASHINGTON, DC 20510

101 E. Washington Street
Suite 220
Greenville, SC 29601

Fax Cover Sheet

CCF
Policy-
telemarketing
TCPA
2254

To: Diane Atkinson

Office: FCC Congressional

Fax Number: 202-418-2804

From:

Jane Goolsby _____
Leslie Thrasher _____
Kevin Bishop _____
Other _____

Van Cato X _____
Edward Mercer _____
Ashley Wilson _____

Date: 7/13/04

Notes: Please review the enclosed and respond.

Pages to Follow: 3

If you have any problems receiving this fax, please call
(864) 250-1417.

LINDSEY O. GRAHAM
SOUTH CAROLINA
(202) 224-5972

United States Senate

WASHINGTON, DC 20510

July 13, 2004

Ms. Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 12th Street, S.W., Room 8-C453
Washington, DC 20554

RE: John Blackwell

Dear Ms. Atkinson:

Enclosed is a copy of correspondence I have received from the above named constituent. I believe you will find it self-explanatory.

Your reviewing this material and providing any assistance or information possible under the governing statutes and regulations will be greatly appreciated. Thank you for your attention in this matter. I look forward to hearing from you soon.

Sincerely,



Lindsey O. Graham
United States Senator

LOG/vc

Please refer to case (159467) when you respond.

Please reply to: Senator Lindsey Graham
101 East Washington Street, Ste. 220
Greenville, South Carolina 29601

RECEIVED TIME JUL. 13. 9:24AM

PRINT TIME JUL. 13. 9:25AM

Hickman, Wes (L. Graham)

From: Nobody [nobody@www.senate.gov]
Sent: Thursday, June 17, 2004 10:57 AM
To: Hickman, Wes (L. Graham)
Subject: Senator Lindsey Graham

RECEIVED

JUL 06 2004

<APP>SCCMail
<PREFIX>Mr.</PREFIX>
<FIRST>John</FIRST>
<LAST>Blackwell</LAST>
<ADDR1>126 Knollwood Dr.</ADDR1>
<ADDR2></ADDR2>
<CITY>Spartanburg,</CITY>
<STATE>SC</STATE>
<ZIP>29301</ZIP>
<HPHONE>864.699.8084</HPHONE>
<WPHONE></WPHONE>
<EMAIL>jblackw239@aol.com</EMAIL>
<MSG>John Blackwell
126 Knollwood Dr.
Spartanburg,, SC 29301

June 17, 2004

The Honorable Lindsey O. Graham
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510-4001

JUN 17 2004

Dear Senator Graham:

I am constituent and a professional in the credit and collection industry.

I am a member of ACA International (ACA), the national association of credit and collection professionals. On August 25, 2003, ACA filed a formal petition with the Federal Communications Commission (FCC) regarding the unintended workability issues hampering legitimate debt collection activity caused by the Commission's 2003 modifications to the Telephone Consumer Protection Act (TCPA) regulations. Although the ACA petition is considered non-controversial, the FCC has not acted.

I am writing to request your immediate assistance in contacting the FCC on behalf of my local company and the thousands of other credit and collection industry members in support of the ACA International petition.

Background

On July 25, 2003, the FCC promulgated regulations pursuant to the TCPA which, among other requirements, stipulate that when a company uses a pre-recorded message to communicate with consumers, the pre-recorded message must identify the name of the company as registered with state authorities. Also in the final TCPA regulations, the FCC, in its attempt to regulate telemarketing sales calls, has prohibited the use of an autodialer and/or pre-recorded message to place a call to persons on a wireless phone, without prior express permission.

Both of these regulations pose unintentional, but nevertheless, gravely serious compliance issues for the credit and collection industry. ACA International understands the FCC's intent to curb unwanted telemarketing calls, but the Commission's efforts have negatively impacted the business of lawful and ethical debt collection.

Workability Issues

Issue I: The new TCPA regulatory requirement that a company must transmit its registered name at the beginning of pre-recorded message potentially would trigger liability under the third-party disclosure prohibition of the Fair Debt Collection Practices Act (FDCPA). The FDCPA is the primary federal law governing the credit and collection industry. The FDCPA prohibits collection agencies, when communicating with consumers, from disclosing the existence of a debt to a third-party without proper authorization. Such disclosure would occur if someone, other than the intended recipient, listens to the pre-recorded message.

Debt collection agencies having names that suggest they are in the business of collecting debt, for example, "ABC Collections, Inc." or "ABC Recoveries, Inc.," cannot comply with this TCPA regulation without simultaneously violating the FDCPA. The FCC's requirement that a debt collector convey its registered name at the beginning of a pre-recorded message could easily expose the collector to liability under the disclosure prohibitions of the FDCPA.

Issue II: The new TCPA regulations are intended to restrict the use of autodialers and pre-recorded message technologies by telemarketers. Debt collectors are not telemarketers. The Federal Trade Commission (FTC), the primary federal agency regulating the credit and collection industry, has already determined that debt collection calls do not constitute "telemarketing." However, the FCC rule contradicts what the FTC has already resolved - that debt collectors are not "telemarketers" within the meaning of the TCPA. It was Congress' intent that the FTC and the FCC should promulgate consistent rules. Therefore, by following the FTC's lead, the FCC should similarly determine debt collection calls do not constitute telemarketing and exempt such calls from the TCPA regulations.

As part of the FCC's intent behind the limitation on telemarketers' use of autodialers and pre-recorded messaging is that consumers do not expressly consent to receiving calls to wireless numbers. Collectors, however are not telemarketers and do not telephone consumers to sell or market goods or services. Rather, they contact consumers for the primary purpose of completing a transaction from which consumers already have obtained a benefit, but have not fully paid. Consumers arguably give their implicit consent to be contacted for legitimate collection purposes when they enter into an agreement for goods or services. Telephone calls to a wireless or wireline number which are initiated for the purpose of collecting a debt should not be subject to the TCPA's autodialer or pre-recorded message restrictions and the doctrine of implied consent should be recognized by the Commission.

The debt collection market generates approximately \$13 billion in revenues for United States companies. Credit and collection companies use sophisticated technologies such as autodialers and pre-recorded messaging to efficiently collect on this massive amount of outstanding debt. The revised TCPA regulations unfairly restrict market forces by limiting the use of technology for legitimate collection purposes.

The credit and collection industry needs relief from the compliance predicament resulting from the TCPA rule modifications. As it stands today, collection agencies face a conflict that forces them to violate the primary federal law governing the industry (Fair Debt Collection Practices Act - FDCPA) in order to comply with the FCC's TCPA regulations. Clearly, the FCC did not intend to create this workability issue, but has yet to act to resolve its effect. Thousands of credit and collection companies are held hostage by the inconsistent requirements found in the FDCPA and the TCPA regulations.

I am requesting that you contact the FCC on my behalf and ask for a resolution to the workability issues caused by the TCPA modifications. This is a major operations obstacle for my business. Your help would be greatly appreciated.